

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 4871 of 1996

With

FIRST APPEALS No. 4872, 4873, 4875, 4878, 4883, 4884, 4886, 4887, 4888, 4889, 4891, 4892, 4893, 4899, 4900, 4901, 4907, 4909, 4910, 4911, 4912, 4913, 4914, 4915, 4916, 4921, 4923, 4925, 4926, 4927, 4929, 4930, 4931, 4933, 4935, 4938, 4940, 4941, 4943, 4944, 4945, 4946, 4947, 4948, 4949, 4950, 4951, 4952, 4955, 4956, 4957, 4958, 4959, 4961, 4962, 4964, 4965, 4966, 4967, 4969, 4970, 4971, 4972, 4975, 4976, 4977, 4479, 4980, 4981, 4982, 4983, 4985, 4986, 4987, 4988, 4989, 4992, 4994, 4995, 4996, 4998, 4999, 5000, 5001, 5002, 5004 and 5005 of 1996.

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT

AND

Hon'ble MR.JUSTICE H.R.SHELAT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : Yes
2. To be referred to the Reporter or not? : Yes:
3. Whether Their Lordships wish to see the fair copy of the judgement? : No.
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : No :
5. Whether it is to be circulated to the Civil Judge? : No.

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STATE OF GUJARAT

Versus

CHAUDHARI PARDHIBHAI NATHABHAI & OTHERS

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Appearance:

Shri P.G. Desai, Government Pleader for the appellant in other First Appeals.

Shri Mukesh Patel, A.G.P. for the appellant in First Appeals No. 4982, 4983, 4985, 4986, 4987, 4988, 4989, 4992, 4994, 4995, 4996, 4998, 4999, 5000, 5001, 5002, 5004 and 5005 of 1996.

Shri Mohanbhai S. Desai, Advocate for the respondents in all the appeals.

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CORAM : MR.JUSTICE J.N.BHATT and MR.JUSTICE H.R.SHELAT  
(Date of decision: 09/09/97)

ORAL JUDGEMENT (Per: J.N. Bhatt, J.)

Admit. Service of notice of admission is waived by learned Advocate, Mr. M.S. Desai for the respondents in entire group. Upon their joint request, the entire batch of 88 First Appeals is taken up for final hearing. In view of the peculiar circumstances and special aspects, since common questions are involved in the entire group arising out of a common notification; a common judgment in respect of the same village, upon joint request, they are being disposed of by this common judgment.

2. In this batch of 88 First Appeals under Section 54 of Land Acquisition Act, 1894 (L.A. Act), the appellant State of Gujarat has questioned the legality and validity of a common judgment and award dated 21-4-1995 recorded by learned Extra Assistant Judge, Mehsana in Land Acquisition Reference Cases No. 1448 of 1991 to 1584 of 1991.

3. The Reference Court enhanced the market value by Re.1.00. Being aggrieved by the said awards of the Reference Court, the appellant has come up before this Court challenging its legality and validity by filing this group of appeals.

4. A Notification under Section 4(1) of the L.A. Act was gazetted on 8-6-1984 followed by a Notification published under Section 6 on 19-4-1990. The requisite process under Section 9 was concluded on 6-12-1990. The Land Acquisition Officer passed the award on 18-2-1991. The acquisition of land of village Ranpur was

necessitated for the project of Mukteshwar Irrigation Scheme. For the said project, the lands forming part of village Ranpur, Dulana, Vasai, Chelana and Pandwa had been acquired.

5. The Land Acquisition Officer offered a fixed market value at Rs. 0.45 ps. for non-irrigated land; Rs. 0.65 ps. for the irrigated land; and for Kyari land Rs.0.72 ps. per square metre as against the claim of the claimants at Rs. 500/- per sq.metre.

6. The parties relied on documentary and oral evidence. On behalf of the claimants, one Ganesh Ramji was examined at Exh. 297, whereas, on behalf of the opponent one Pitamber Purshottambhai Patel was examined at Ex. 300. Witness No.2 C.P. Modi was examined at Ex.307. Claimants also relied on the revenue record. They produced revenue record in the form of Pahani Patraks at Ex. 9 to 295. The parties also relied on the award of the District Court recorded in L.A.R. No. 1070 to 1085 all of 1987, whereas opponent relied on the award at Ex. 301 in respect of Land Acquisition Case No. 6 of 1988. The opponents had also filed written objection at Ex. 4. Common evidence was led after consolidating the entire group before the Land Reference Court.

7. Upon the assessment of the evidence and analysis of relevant facts and circumstances emerging from the record of the case, the Reference Court enhanced the market value at Rs. 6.00 per sq.metre of the acquired land, over and above the benefits arising out of Section 23(1-A) and 23(2) of the LA Act by its common judgment on 21st April 1995 holding, (1) that the amount of compensation awarded and offered by the Land Acquisition Officer is inadequate; and (2) that the claimants are entitled to additional amount of compensation. Therefore, the Reference Court awarded an amount of Rs. 6.00 per sq.metre of the acquired land.

8. Being aggrieved by the said common judgment and the awards, the State of Gujarat has questioned its legality and validity by filing 136 appeals invoking the aids of the provisions of Section 54 of the LA Act. We may state here that, out of 136 appeals, 36 appeals came to be dismissed by us summarily on the ground of smallness of amount. Out of remaining 100 matters, there are 18 matters wherein technical questions and procedural aspects, arising on account of death of one or the other party at one time or at the other time, are involved, out of which four matters form part of that group of 36 appeals which came to be dismissed at the threshold on

the ground of smallness of amount. We shall deal with 14 remaining matters separately in view of the procedural and technical aspects being involved. However, right now we are dealing with 88 appeals.

9. Learned Government Pleader, Mr. Desai instructed by Mr. Patel, forcefully submitted that the Reference Court has committed serious error of law in enhancing the amount of Re. 1.00 for market value per sq.metre of the acquired land, which is not only excessive but is illegal. In support of his contention, he took us through the relevant copies of the evidence and the record. He has also placed reliance on several decisions of this Court to which reference will be made by us at an appropriate stage as and when required in this connection and for support.

10. As against that, learned Advocate, Mr. M.S. Desai, while appearing for the respondents has supported the conclusions reached by the Reference Court in the light of the evidence on record. He has, inter alia, contended that looking to the evidence on record in general and the factors such as nature of land, the fertility of land, and the nearness of land to the river, which have rightly weighed with the Reference Court in raising the amount of compensation to the extent of Rs. 6.00 per sq.metre for acquired lands. So he has, fully, supported the impugned common judgment and order of the Reference Court.

11. After having carefully examined the entire record and considering the copies of the evidence which were supplied to us during the course of the submissions before us and in the background of the latest proposition of law enunciated, we are of the opinion that the additional amount awarded by the Reference Court towards the market value per square metre in respect of an acquired land is not supportable, is not properly evaluated, and lacks legal support. More so, in view of earlier decisions of this Court rendered in respect of land acquisition matters, we need not divulge ourselves into minute and meticulous principles governing the amount of compensation in a case of land acquisition matter like the one on hand. Suffice to say that the principles and the aspects enunciated under Section 23 of the Act must be borne in mind while fixing and deciding the market value for the purpose of assessment of compensation.

12. There is no dispute about the fact that the Reference Court has, essentially, based its conclusion on

yield pattern. The Reference Court has taken into consideration the quality of the land, the fertility thereof, the availability of water, number of crops, type of land etc... Agricultural produce derived out of such lands and its resultant market value have also been considered.

13. The Reference Court has also placed reliance on the revenue record in the form of Pani Patraks produced at Ex. 9 to 295 which, clearly, go to show that, how, many crops were being taken by the claimants in their respective parcels of land. Approximate value of such agricultural produce has also been considered. Therefore, in our opinion, the assessment of compensation and market value made by the Land Acquisition Officer in his award dated 18-2-1991 is, undoubtedly, grossly inadequate and inordinately low, but that is not all.

14. The question which crops up for consideration and adjudication at this juncture is as to whether the amount of Rs. 6.00 per sq.metre awarded by the Reference Court, is just, reasonable and acceptable in the light of the evidence on record. In this connection, our attention has been invited to several decisions of this Court which are quite relevant and material for the purpose. In our opinion, we have not been able to find justification in straightway fixing the amount of market value at Rs. 6.00 per sq.metre of acquired land. Upward revision of the award recorded by the Land Acquisition Officer is a must but the question needs to be debated at this juncture is as to what extent. We are also convinced that an amount of Rs. 6.00 per sq.metre as market value of the acquired land assessed and fixed by the Reference Court cannot be said to be just and reasonable. The ultimate design and the purpose of the provisions of LA Act, and, more so, Section 23, is to see that the land owners whose lands or persons who are interested in the lands after acquisition under the LA Act, are given compensation just and reasonable determining the market value as it then prevailed on the date of the publication of the Notification under Section 4(1) of the Act. Measuring the present case with that parameter, the amount of Rs. 6.00 per sq.metre appears to be on a higher side. In our opinion, it needs to be reduced. Now the question that would arise is as to at what extent it should be reduced.

15. In this connection, it will be profitable and useful to refer the decisions of this Court relied on by both the sides. Learned Government Pleader, Mr. Desai has, vehemently, contended that in no case the claimants

would be entitled to an amount of Rs. 5.00 per sq.mtre for an acquired land for fixing the market value. In support of his contention, he has placed reliance on the decision of this Court rendered in First Appeal No. 586 of 1994 and other matters on 28-7-1994. The Division Bench of this Court in case of lands pertaining to Village Kajole and Kotda after considering the facts and circumstances has found justification in accepting an amount of Rs. 5.00 per sq.metre which was awarded by the Reference Court in that case. The lands acquired out of the said villages are for Sippu Irrigation Project. The market value was fixed at Rs. 5.00 per sq.metre.

16. In another unreported decision of this Court rendered by Division Bench in First Appeal No. 1360 of 1994 and allied matters on 13th September 1993, the award of the Reference Court in respect of acquired lands of village Pandwa of Vadgam Taluka which is about 40 kms., from Kotda and which was one of the villages covered for the purposes of acquisition of the same project of Mukteshwar Irrigation Dam, this Court has upheld only the valuation of the land at Rs. 50,000/- per hectare which means an amount of Rs. 5.00 per sq.metre. This decision which is rendered by Division Bench of this Court is relevant and material for the present purpose. It was jointly submitted that the Division Bench decision was carried to the Supreme Court but unsuccessfully. It would be also very interesting to note that the notification in respect of Pandwa village acquisition was in the year 1984, whereas, the notification in question in group of matters on hand was on 8-6-1989. The award was confirmed in First Appeals No. 586 of 1994 and 613 of 1994 on 28-7-1994. After considering the facts and circumstances it was held that the computation of Rs. 5.00 per sq.metre was justified. The contention raised on behalf of the claimants that the amount of Rs. 6.00 per sq.metre could be awarded was rejected. This Division Bench decision clearly supports the view which we are inclined to take. Again, this Court (Coram: M.H. Kadri, J.) in First Appeals No. 1147 of 1996 to 1190 of 1996, placing reliance on the earlier two decisions referred hereinabove, awarded an amount of Rs. 5.00 per sq.metre of the acquired land in respect of village Chelana of Kheralu taluka. It is clearly observed in the said judgment that the notification was published under Section 4 sub-section (1) on 8-6-1989. So, the notification is the same, the project is the same, and the villages are also adjoining. So, this is again a very important piece of evidence wherein the award of Rs. 5.00 per sq.metre has been upheld. This decision of this Court fully supports our view. The observations and the

discussions made in Paras 6 and 7, by the Learned Brother Judge, also alleviate and elate the view which we have taken in this group of matters.

17. Having regard to the facts and circumstances emerging from the record of the case, the copies whereof were supplied to us during the course of the submissions and after having heard dispassionately the learned advocates appearing for the parties, and considering the proposition of law laid down in the relevant aforesaid four decisions of this Court, and the general principles enunciated by the Apex Court, and in the light of the provisions of Section 23 of the LA Act, we are of the view that the Reference Court's conclusion of awarding an amount of Rs. 6.00 per sq.metre of the acquired land is unsupportable being not just and legal and instead it would be just and proper to substitute it by an amount of Rs. 5.00 per sq.metre. Consequently, the amount of compensation shall be calculated on the basis of the market value which is hereby determined at Rs. 5.00 per sq.metre, in respect of acquired lands, instead of Rs.6.00. Therefore the entire group of 88 appeals is partly allowed to that extent but without costs.

18. Learned Advocate, Mr. M.S. Desai for the claimant/respondent has contended that the amount of compensation has not been deposited or paid to the claimants since long. In the circumstances, the appellant-State of Gujarat is directed to deposit the amount of compensation in terms of the directions of this judgment within a period of eight weeks from today. In view of the decision of the Apex Court in State of Maharashtra vs. Babu Govind - AIR 1996 SC 904 the order whereby the amount is directed to be deducted under the provisions of Section 31 of the LA Act and the resultant Circular of the Government are quashed and set aside and the same amount shall not be deducted. No order as to costs.

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(R.M. Ravindran)

Private Secretary  
to the Hon'ble Judge  
High Court of Gujarat  
Ahmedabad

